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NORTHERN DISTRICT OF CALIFORNIA

7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 Tetsuya Joe Nomura,

11  
12 Plaintiff,

13  
14 vs.

15  
16 YouTube LLC.,

17  
18 Defendant.

Case No.: 3:11-CV-01208-SI

**PLAINTIFF'S SECOND AMENDED  
OPPOSITION TO YOUTUBE'S  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, TO STRIKE**

**Hearing**

Date: **Tuesday, November 04, 2011**

Time: **9:00 am**

Judge: **Hon. Susan Illston**

Courtroom: **10, 19th Floor**

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**STATEMENT OF ISSUES**

Defendant YouTube LLC (herein “*YouTube*”) has filed a motion to dismiss the patent infringement Complaint (herein “*Complaint*”) [Doc. 01] –filed on March 11, 2011 by Plaintiff Tetsuya Joe Nomura (herein “*Nomura*”)– pursuant to Fed. Rule of Civ. Proc. 12(b)(6) for failure to state a claim upon which relief can be granted, or alternatively, to dismiss the claim for patent infringement and strike Plaintiff’s claim for pre-issuance notice of infringement damages pursuant to Fed. Rule of Civ. Proc. 12(f). Plaintiff *Nomura* opposes *YouTube*’s motion based on the grounds that said motion misrepresents, misconstrues, and mischaracterizes the facts.

Plaintiff *Nomura* firmly believes that, based on the material facts and evidence provided herein and to-date, the Court will discover there are adequate findings sufficient to DENY *YouTube*’s motion to dismiss, and DENY their request to strike damages. Or, alternatively, to support a decision by this Court for a Motion to Dismiss with Leave to Amend. The legal foundation for the aforementioned is based on the supporting Memorandum of Points and Authorities, all pleadings and supporting documents on file in this action, oral argument of counsel, and any other matter(s) that may be submitted before and during the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Filing suit on March 11, 2011 [Doc. 01]- Plaintiff *Nomura* brought this action against the Defendant to stop *YouTube*’s unauthorized use –of the Computer Implemented Invention (“*CIP*”) described, claimed, and disclosed therein Plaintiff *Nomura*’s ’622 patent– without any license or lawful right. *YouTube*’s willful infringement –as it has been discovered– includes but is not limited to, *YouTube*’s business(es), process(es), method(s), and technology(ies) –or significant portions thereof– used directly or indirectly by *YouTube*, its affiliates, third-parties and clients, throughout the State of California, the United States, and most other countries in the world.

*YouTube*’s media assets or media objects –which contain video of any kind or format, including but not limited to, music and other entertainment videos, personal videos, video advertisements, video games and other types of interactive videos, and all other relevant video-related media assets– that are stored, temporarily or permanently, for download or streaming via

1 *YouTube* –its affiliates, third-parties, clients and viewers (herein “*co-infringers*”), are indeed  
 2 infringing said '622 patent. This also means that any media assets *YouTube* and its *co-infringers*  
 3 provide –directly or indirectly– to any other “third- or other party(ies)” for conversion, upload,  
 4 storage, download, streaming, or viewing (not necessarily in that order) via the Internet are also  
 5 infringing patent '622.

6 To better illustrate these facts, Plaintiff *Nomura* has included a snapshot of *YouTube*'s  
 7 website home page (<http://www.youtube.com/> as of Oct. 14, 2011), herein shown as **Exhibit 01**.  
 8 As can be clearly seen, the banner advertisement (displayed in Adobe Flash and/or Shockwave  
 9 video format) at the top –for the movie “The Thing”– as with all other video-related media assets  
 10 displayed on their home page (and thousands more web pages on *YouTube*) –available for free,  
 11 sale, or rental– in every format, display, and file size- all *YouTube* video media assets have been  
 12 and still are willful infringements on Plaintiff *Nomura*'s '622 patent.

13 Please notice the video “**The Avengers (2012) watch the Official Teaser Trailer | HD**”  
 14 is highlighted and its URL (universal resource locator) or 'link' is also displayed  
 15 “[http://www.youtube.com/watch?v=zatgnqdlfs&feature=topvideos\\_mp](http://www.youtube.com/watch?v=zatgnqdlfs&feature=topvideos_mp)”; within the body of the  
 16 URL is the parameter “v=zatgnqdlfs”, where “v” tells *YouTube* the object parameter is a video  
 17 and “zatgnqdlfs” indicates the name, identity, or index of the video media asset of interest for  
 18 download, streaming, and/or viewing from *YouTube*'s remote accessible contents server(s).

19 This single page –amongst thousands, if not millions, more– clearly identifies that  
 20 *YouTube* is with absolute certainty, in fact, using technology(ies), method(s), and process(es) as  
 21 well as design, user interface, storage, distribution, and business model(s) – all of which are  
 22 identical, or bare remarkable similarity, to description(s), claim(s) and disclosure(s) as set forth  
 23 in Plaintiff *Nomura*'s '622 patent.

## 24 **II. BACKGROUND**

25 Plaintiff *Nomura* applied for United States patent registration on December 15, 2000. On  
 26 August 07, 2007, United States Patent No. 7,254,622 (herein “'622”) was duly and legally issued  
 27 for Plaintiff *Nomura*'s computer implemented invention (herein “*CIP*”) entitled “VIDEO-ON-  
 28 DEMAND SYSTEM” (herein “*VoD*”). Plaintiff *Nomura* was legally granted the '622 patent and



1 continues to hold all rights and interest in said '622 patent. A true and correct copy of the '622  
 2 patent (including the official "Certificate of Correction") is included in the July 29, 2011  
 3 EXHIBIT A [Doc. No. 24-1].

4 Plaintiff *Nomura* believes my submitted *Complaint* was and still is sufficient to describe,  
 5 in a very simple straightforward manner, the material facts of this case- specifically in that: 1)  
 6 Plaintiff *Nomura* holds a duly authorized patent for uploading, converting, downloading and  
 7 streaming (not necessarily in that order) any and all video-related media assets –there on to  
 8 and/or there from remote accessible contents server(s), to/from any device– via the Internet, and,  
 9 2) *YouTube*'s entire business model is based upon the ability for *YouTube*, its affiliates, third-  
 10 parties, clients and/or viewers to upload, convert, download and stream said video media assets  
 11 (again, not necessarily in that order) via the Internet. Despite *YouTube*'s wishful assertions, these  
 12 are facts sufficient to survive a motion to dismiss- certainly one asking "with prejudice".

13 *YouTube*'s infringements and *co-infringements* of patent '622 are all-encompassing by  
 14 being direct as well as contributory and induced infringements since *YouTube* directly infringes  
 15 from its own site(s) and allows other parties to embed *YouTube*'s video media assets into and  
 16 'serve' from those affiliates' and/or third-parties' websites and devices as well as encouraging  
 17 others to upload, convert, download, stream and 'share' said video-related media assets.

18 Plaintiff *Nomura* now realizes my *Complaint* may have lacked the procedural or  
 19 linguistic clarity necessary to more fully describe said infringement(s) –inflicted by Defendant  
 20 *YouTube* upon Plaintiff *Nomura*– sufficiently to meet usual levels of legal standards expected to  
 21 allow the case to proceed on its merits, without any objections. However, Plaintiff *Nomura*  
 22 respectfully notes that any such previous deficiencies were due to my extreme language barriers  
 23 –as an immigrant from Japan– and equally difficult barriers from inadequate understandings of  
 24 the law, the complex legal process(es), and the daunting legal system as a whole- on top of my  
 25 sizable English (and legal) communications barriers- all of which, as can soon be seen, have  
 26 been minimized to a large part by the new assistance Plaintiff is receiving. Still, Plaintiff  
 27 *Nomura* would also like to respectfully bring to Court's attention the following points.

28 Plaintiff's *Complaint* [Doc. No. 01] includes an exhibit –on page two (2) of said

1 *Complaint*– entitled “Distribution Layers Modules” which is a colored modular schematic  
 2 diagram (herein, “*Diagram*”) that attempts to simplify the technical overview of patent ‘622.  
 3 Said *Diagram* and its meaning are described with great detail in patent ‘622. This factual  
 4 information shows how the patent’s *VoD* remote accessible contents server(s) –shown in  
 5 *Diagram* as boxes 113 and 114 respectively– connect(s) to the Internet Service Provider(s)  
 6 (herein “*ISP(s)*”) –shown in *Diagram* as boxes 115 and 116 respectively– through the internet to  
 7 clients/viewers – shown in *Diagram* as boxes 125 and 137 respectively. To-date, the material  
 8 facts and supporting evidence herein submitted to the Court, clearly identify the ways and means  
 9 by which *YouTube*, its affiliates, third-parties, clients, and viewers have been –and still continue–  
 10 to willfully infringe Plaintiff *Nomura*’s ‘622 patent.

11 The material facts and supporting evidence submitted herein and to-date reinforce  
 12 Plaintiff *Nomura*’s respectful request that this Court DENY *YouTube*’s motion to dismiss and  
 13 DENY *Youtube*’s request to strike Plaintiff *Nomura*’s request for damages.

### 14 **III. LEGAL ARGUMENT**

#### 15 **A. Rule 12(b)(6) Standard**

16 To avoid dismissal, “plaintiffs must plead facts showing they are entitled to relief.”  
 17 *Grosz v. Lassen Cmty. College Dist.*, 572 F. Supp. 2d 1199, 1207 n.11 (E.D. Cal. 2008). “A  
 18 plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels  
 19 and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell*  
 20 *Atl. Corp. v. Twombly*, 550 U.S. 555 (2007) (internal quotation marks omitted). Although “all  
 21 allegations of material fact are taken as true and construed in the light most favorable to the  
 22 nonmoving party,” *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996), a  
 23 complaint or counterclaim must “raise a right to relief above the speculative level.” *Bell Atl.*  
 24 *Corp. v. Twombly*, 550 U.S. at 555 (citations omitted).

25 In said *Complaint*, Plaintiff *Nomura* has described a valid claim that *YouTube* was and  
 26 still is willfully infringing ‘622 patent, has submitted as evidentiary support a simplified  
 27 *Diagram* showing the ways and means by which *YouTube* is infringing said patent, and has  
 28 requested past, present, and future damages- albeit in a very simple elegant approach.



1 To further support Plaintiff *Nomura's* patent infringement *Complaint* and claims, let it be  
 2 known that according to Wikipedia and other reliable sources, *YouTube* was founded in or  
 3 around early 2005 and acquired by Google, as a “wholly-owned subsidiary” (see *YouTube's*  
 4 “Corporate Disclosure Statement” [Doc. No. 26]), in or around late 2006; a most recent snapshot  
 5 of “YouTube - Wikipedia, the free encyclopedia”  
 6 (<https://secure.wikimedia.org/wikipedia/en/wiki/YouTube>) is included herein as **Exhibit 02**. It  
 7 should also be noticed that large portions of the remaining information on this *YouTube* section  
 8 of Wikipedia describe technology(ies), method(s), and process(es) as well as design, user  
 9 interface, storage, distribution, business model(s) and more – all of which are identical, or bare  
 10 remarkable similarity, to description(s), claim(s) and disclosure(s) as set forth in Plaintiff  
 11 *Nomura's '622* patent.

12 As officially declared in patent '622, the patent Filing date is “Dec. 15, 2000”; the first  
 13 patent Publication date is “Jun. 20, 2002”. The patent Issue date is “Aug. 20, 2007”. It is a  
 14 documented official material fact that the '622 patent Filing and Publication dates occur **PRIOR**  
 15 **TO** *YouTube's* well-documented and publicized launch, including their *VoD* download and  
 16 streaming, video-advertisement, and other related video services as well as any other known  
 17 deployment of video-related media assets which exist –within *YouTube*, and/or its *co-*  
 18 *infringers*– for upload, conversion, download, and/or streaming via the Internet.

19 It should also be noted that –despite being available to the public for review or objection–  
 20 at NO TIME during the **SEVEN (7) YEAR** patent process, or in the subsequent years since  
 21 being issued– have either *YouTube* or Google ever questioned or contested the validity of patent  
 22 '622 either by formally and officially filing notice of such with the United States Patent and  
 23 Trademark Office (herein “*USPTO*”), or by pursuing other very viable remedies and/or legal  
 24 option(s) to address any disputes with said patent, or any portion(s) thereof. Likewise, neither  
 25 *YouTube* nor Google has made any offers for patent '622 licensing or royalty contracts.

26 Further, according to Wikipedia and other reliable sources, in “November 2006,  
 27 YouTube, LLC was bought by Google Inc. for US\$1.65 billion”. Respectfully –and for the  
 28 record– it is highly unlikely **ANY** company would pay “\$1.65 billion” for another company

1 without first performing the most comprehensive thorough exhaustive due-diligent risk/reward  
 2 analysis(es) of the acquisition target- in this case- *YouTube*. Failure to perform such analysis –  
 3 including (but not limited to) *YouTube*'s finances, earnings projections, business patents,  
 4 trademarks, competitive analysis, and much more– by Google, and/or failure by *YouTube* to  
 5 disclose such knowledge to Google, would be gross negligence, dereliction of duty, and reckless  
 6 fiduciary irresponsibility- at the very least.

7 Therefore, logically, it is nearly certain that a brilliant sensible savvy multinational  
 8 company such as Google and/or *YouTube* –at some point in 2006, or prior to, or thereabout the  
 9 time of said *YouTube* acquisition– must have inevitably discovered the existence and knowledge  
 10 of Plaintiff *Nomura*'s *VoD* '622 patent, that is, if Google and/or *YouTube* weren't already aware  
 11 of said '622 patent prior to Google's acquisition. If, on the other hand, Google and/or *YouTube*  
 12 were/was negligent in not discovering such *VoD* risks and exposing such liabilities- then  
 13 *YouTube* and/or Google, their respective executives, and others (including but not limited to  
 14 legal counsel) may very well be facing one-or-more massive, extremely expensive, trust  
 15 damaging and credibility damaging, class-action investor and/or other related lawsuits.

16 Respectfully, the Court should also notice that Wikipedia states, “According to data  
 17 published by market research company comScore, YouTube is the dominant provider of online  
 18 video in the United States, with a market share of around 43 percent and more than 14 billion  
 19 videos viewed in May 2010” (see  
 20 [http://www.comscore.com/Press\\_Events/Press\\_Releases/2010/6/comScore\\_Releases\\_May\\_2010](http://www.comscore.com/Press_Events/Press_Releases/2010/6/comScore_Releases_May_2010_U.S._Online_Video_Rankings)  
 21 [U.S. Online Video Rankings](http://www.comscore.com/Press_Events/Press_Releases/2010/6/comScore_Releases_May_2010_U.S._Online_Video_Rankings)) and “In May 2011, YouTube reported in its company blog that  
 22 the site was receiving more than three billion views per day.” (see  
 23 [http://www.telegraph.co.uk/technology/google/8536634/YouTube-users-uploading-two-days-of-](http://www.telegraph.co.uk/technology/google/8536634/YouTube-users-uploading-two-days-of-video-every-minute.html)  
 24 [video-every-minute.html](http://www.telegraph.co.uk/technology/google/8536634/YouTube-users-uploading-two-days-of-video-every-minute.html)) **That's three billion willful *YouTube* infringements – DAILY.**

25 Moreover, *YouTube* knowingly, wantonly and willingly infringes patent '622 for one very  
 26 simple reason: **GREED**. As stated in the March 25, 2011 article, “YouTube Dominating Online  
 27 Video Ad Business; \$1.3 Billion Forecast in 2011” ([http://www.videonuze.com/blogs/?2011-03-](http://www.videonuze.com/blogs/?2011-03-25/YouTube-Dominating-Online-Video-Ad-Business--1-3-Billion-Forecast-in-2011/&id=3007)  
 28 [25/YouTube-Dominating-Online-Video-Ad-Business--1-3-Billion-Forecast-in-2011/&id=3007](http://www.videonuze.com/blogs/?2011-03-25/YouTube-Dominating-Online-Video-Ad-Business--1-3-Billion-Forecast-in-2011/&id=3007))

1 –a snapshot of which is herein included as **Exhibit 03**– various industry analysts forecast  
 2 *YouTube's* revenues to exceed \$1 Billion (US) in 2011 just from *YouTube's* video-related  
 3 advertising alone. Such revenue forecasts do NOT include video and/or video game sales,  
 4 rentals or any other revenue(s) generated from their non-advertising video-related business(es).

5 If that is not bad enough, *YouTube* eagerly entices and boldly bribes its *co-infringers* –  
 6 *YouTube's* affiliates, third-parties, clients and viewers– to infringe Plaintiff *Nomura's* '622 patent  
 7 as well via *YouTube's* innovative revenue sharing programs and other 'rewards'. These material  
 8 facts are reinforced by the Aug. 25, 2009 article “YouTube Extends Revenue Sharing Program  
 9 To Anyone With A Viral Video” ([http://techcrunch.com/2009/08/25/youtube-extends-revenue-](http://techcrunch.com/2009/08/25/youtube-extends-revenue-sharing-program-to-anyone-with-a-viral-video/)  
 10 [sharing-program-to-anyone-with-a-viral-video/](http://techcrunch.com/2009/08/25/youtube-extends-revenue-sharing-program-to-anyone-with-a-viral-video/)), a snapshot of which is included herein as

11 **Exhibit 04.**

12 **B. YouTube's Request(s) for Damages To Be Stricken Should Be DENIED.**

13 Plaintiff *Nomura* states 35 U.S.C. § 284 and 35 U.S.C. § 154(d) as two specific prayers  
 14 for relief of damages to be evaluated, assessed, and awarded for the time period(s) of *YouTube's*,  
 15 its affiliates', third-parties' clients' and viewers' past, current, and future infringement(s).  
 16 Numerous material facts and supporting evidence have been provided to this Court to  
 17 sufficiently establish that *YouTube's* request to strike such damage claims are completely without  
 18 merit, and should be DENIED- post-haste.

19 *YouTube* asserts that Mr. *Nomura* –now Plaintiff *Nomura*– has not suffered any injury for  
 20 which damages should be awarded. This assertion is spectacularly specious and factually false.

21 Try negotiating any feasible license or viable royalty agreements with intelligent savvy  
 22 companies who already know your patent has been, and is still being, willfully infringed by  
 23 major international corporations like *YouTube*. How long do you honestly believe it will take  
 24 before said savvy companies begin laughing, if they even take a meeting or your call(s) at all?

25 In point of fact, long before any litigation- Mr. *Nomura* went to Google's Mountain View  
 26 campus in order to personally notify *YouTube* and Google of patent '622 as well as *Youtube's*  
 27 past and present infringement thereof. Google's genius response was to have their security staff  
 28 swiftly surround and rapidly remove Mr. *Nomura* promptly from their premises. This extremely

1 embarrassing, phenomenally frightful, egregious experience was so distraughtly devastating that  
2 it became the genesis and impetus for Mr. *Nomura* to become Plaintiff *Nomura*.

3 Furthermore, Mr. *Nomura*'s personal visit to *YouTube* at Google's campus also served as  
4 'notice' of said infringement(s). Plaintiff *Nomura*'s March 11, 2011 *Complaint* and subpoena,  
5 therein, serve as secondary 'notice' of said patent infringement. Despite such notices, ***YouTube*** –  
6 ***and Google***– **have still continued their willful infringement(s) of Plaintiff *Nomura*'s '622**  
7 **patent- with reckless abandon.**

8 The aforementioned material facts provide, and supportive evidence show, why the Court  
9 must DENY *YouTube*'s motion to dismiss Plaintiff *Nomura*'s patent infringement *Complaint* as  
10 well as why the Court must DENY *YouTube*'s request to strike claims for damages- post-haste.

#### 11 1. Patent Infringement Damages.

12 Moreover, *YouTube*'s clear intent to limit or eliminate Plaintiff *Nomura*'s opportunity(ies)  
13 to collect any and all appropriate damages has significant potential for unjustly eliminating or  
14 severely reducing Plaintiff *Nomura*'s important legal rights.

15 As Plaintiff *Nomura* has discovered, lost profits or reasonable royalties are damages  
16 available for patent infringement. Interest on the damages can often be as much as the damages.  
17 Lost profits assumes that the patent owner is selling the patented item, that he could have met the  
18 demand in the lost market, and that the patent owner can determine with reasonable probability  
19 how much profit would probably have been made if there was no infringement. Reasonable  
20 royalties are available when that amount would be more than lost profits or if lost profits cannot  
21 be proved. Enhanced or punitive damages of three times the award are available for willful  
22 infringement.

23 Damages for patent infringement are governed by 35 U.S.C. § 284 which provides,  
24 “Upon finding for the claimant the court shall award the claimant damages adequate to  
25 compensate for the infringement, but in no event less than a reasonable royalty for the use made  
26 of the invention by the infringer, together with interest and costs as fixed by the court.”

27 The United States Supreme Court interpreted the law as follows, “[T]he present statutory  
28 rule is that only 'damages' may be recovered. These have been defined by this Court as



1 'compensation for the pecuniary loss he [the patentee] has suffered from the infringement ....'  
2 They have been said to constitute "the difference between his pecuniary condition after the  
3 infringement, and what his condition would have been if the infringement had not occurred."  
4 *Aro Mfg. Co. v. Convertible Top Co.*, 377 U.S. 476, 507 [141 USPQ 681] (1964) (citations  
5 omitted).

6 The *Aro* decision further made clear that infringement damages are not determined by the  
7 infringer's profits, but by the loss(es) to the patent owner. "But the present statutory rule is that  
8 only 'damages' may be recovered. These have been defined by this Court as 'compensation for  
9 the pecuniary loss he [the patentee] has suffered from the infringement, without regard to the  
10 question whether the defendant has gained or lost by his unlawful acts.'" *Aro* at 506 (citations  
11 omitted). However, the District Court's use of an infringer's profit margin for comparison  
12 purposes in determining the reasonableness of a patent owner's estimate of lost profits did not  
13 constitute an abuse of discretion. *Kori Corp. v. Wilco Marsh Buggies and Draglines, Inc.*, 761  
14 F.2d 649 (Fed.Cir.1985).

15 In the relatively famous instant-camera infringement case of *Polaroid Corp. v. Eastman*  
16 *Kodak Co.*, 1481, 1484 [16 USPQ 2d] (1990) the United States District Court for the District of  
17 Massachusetts explained that there are two ways to calculate damages. The first and preferred  
18 method is lost profits. The second is reasonable royalty. "The general rule for determining the  
19 actual damages to a patentee that is itself producing the patented item, is to determine the sales  
20 and profits lost to the patentee because of the infringement. Although the statute states that the  
21 damage award shall not be 'less than a reasonable royalty,' 35 U.S.C. § 284, the purpose of this  
22 alternative is not to provide a simple accounting method, but to set a floor below which the  
23 courts are not authorized to go."

24 When clear and convincing evidence is presented that an infringer acted willfully to  
25 infringe a patent, the law permits "increased damages up to three times the damage amount  
26 found or assessed." The Court of Appeals for the Federal Circuit has altered the landscape of the  
27 law on infringement damages and is generally considered to have made damages more rational  
28 and related to the total losses sustained by the patent owner.

1 A first example is *Uniloc USA, Inc. v. Microsoft Corp.*, decided Jan. 04, 2011 (2010-  
2 1035, -1055), wherein the Federal Circuit held that there is no rule of thumb that 25% of the  
3 expected profit rate would be an assumed baseline license rate when calculating patent  
4 infringement damages. Citing others, the Federal Circuit observed: “[The 25 percent rule] takes  
5 no account of the importance of the patent to the profits of the product sold, the potential  
6 availability of close substitutes or equally non-infringing alternatives, or any of the other  
7 idiosyncrasies of the patent at issue that would have affected a real-world negotiation... it fails to  
8 'distinguish between monopoly and normal profit...'” The Court held: “This court now holds as a  
9 matter of Federal Circuit law that the 25 percent rule of thumb is a fundamentally flawed tool for  
10 determining a baseline royalty rate in a hypothetical negotiation. Evidence relying on the 25  
11 percent rule of thumb is thus inadmissible under Daubert and the Federal Rules of Evidence,  
12 because it fails to tie a reasonable royalty base to the facts of the case at issue.”

13 A second example is *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1324 (Fed. Cir.  
14 2009), wherein the Federal Circuit reiterated that “The second Georgia-Pacific factor is '[t]he  
15 rates paid by the licensee for the use of other patents comparable to the patent in suit.' 318 F.  
16 Supp. at 1120.” The Court stated that the claimant must “prove that the licenses relied on were  
17 sufficiently comparable” to what would prevail in the hypothetical royalty negotiation in order to  
18 be usable for purposes of damages calculation in an infringement damages calculation.

19 And a third example is *In re Seagate*, 497 F. 3d 1360 (Fed. Cir. 2007), where the Federal  
20 Circuit held that in order to support an award of special damages (treble damages), one must  
21 prove “willful infringement... [with] at least a showing of objective recklessness.”

22 In *Polaroid Corp. v. Eastman Kodak Co.*, 16 U.S.P.Q.2d 1481 (D. Mass. 1990), Polaroid  
23 argued for a 72.5% reasonable royalty for cameras and a 63.4% reasonable royalty for film,  
24 essentially equating its reasonable royalty claims to its claims for lost profits. Kodak countered  
25 with a detailed Georgia-Pacific analysis and contended a reasonable royalty would be 5%. Far  
26 from splitting the difference, the District Court found Kodak's analysis persuasive and awarded  
27 Polaroid only 10%, which was far closer to Kodak's number than to Polaroid's. The hundreds of  
28 millions of dollars that Polaroid undoubtedly left on the table by overreaching for 60 to 70%



1 rather than contending for a 25 or 30% reasonable royalty is a stern lesson that reasonable rather  
 2 than extreme positions are the key to the success of not only the infringer, but also the patent  
 3 owner. The Court awarded Polaroid nearly one-billion (approximately \$874 million US) dollars.

4 Further more, the Federal Circuit in *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1544-49  
 5 (Fed Cir. 1995) (*en banc*), dispelled the notion that patent owners must practice their own  
 6 patents to be entitled to lost profits. Patent owners that compete with infringers and lose sales  
 7 because of the infringement can meet the “but for” test even if their own product is not covered  
 8 by the patent in suit or any patent for that matter.

9 Therefore, it is Plaintiff *Nomura's* understanding that *YouTube's* willful repeated  
 10 continuing infringement has directly prevented –and is still impeding– any and all licensing  
 11 and/or royalty agreements with other business(es) that utilize or may wish to utilize any  
 12 portion(s) of the “Video On Demand” patent ‘622 descriptions, claims and/or disclosures within  
 13 their past, present, or future business operations. This catastrophic loss has been tremendously  
 14 devastating –financially and otherwise– to Plaintiff *Nomura*.

15 As Plaintiff *Nomura* understands the law, *YouTube* is liable for ALL of Plaintiff  
 16 *Nomura's* cumulative losses to-date, as total damages incurred therefrom all such patent  
 17 infringements throughout the world. *YouTube's* liability clearly exists –in a causal relationship  
 18 due to *YouTube's*, its affiliates', its third-parties' clients' and viewers' direct, induced, and/or  
 19 contributory infringements– since Plaintiff *Nomura* has been unable to obtain any patent licenses  
 20 or royalty agreements with the hundreds –if not hundreds of thousands– of businesses who  
 21 utilize or have utilized –in part or in whole or in close similarity to– descriptions, claims and/or  
 22 disclosures found in patent ‘622.

## 23 **2. Willful Intent or Willful Infringement.**

24 A Plaintiff must allege facts sufficient to demonstrate that *YouTube's* past, current, or  
 25 future activities constitute infringement that is willful. At the very least- Plaintiff *Nomura's*  
 26 *Complaint* does serve as notice of infringement for *YouTube*. Since *YouTube* still allows  
 27 viewing, downloading and streaming of all video-related media assets/content, ALL acts of  
 28 infringement subsequent to said notice are –as a material fact – “willful”. Further more, if it is

1 discovered that *YouTube* knew about Plaintiff *Nomura's* VoD '622 patent, then ALL subsequent  
 2 infringements since that date are also “willful”. Further more, should this prove to be an  
 3 “exceptional case”, Plaintiff is entitled to its appropriate attorney fees under 35 U.S.C. § 285.

4 “Willful intent” also provides Plaintiff with the right to collect up to 3-times the actual  
 5 damages –“treble damages”– assessed in such patent infringement cases. Case law shows that a  
 6 Judge can assess such damages and/or attorney fees if the case or conduct justifiably warrants  
 7 such, without necessarily any need by the Plaintiff to plead or prove “willful intent” or “willful  
 8 infringement” See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 255 (1986).

9 The U.S. Federal Circuit recently affirmed an award of attorneys' fees and sanctions  
 10 against plaintiff Eon-Net (See *Eon-Net LP v. Flagstar Bancorp*, No. 2:05-CV-2129, Judgment  
 11 (ECF No. 200) (W.D. Wash. Jun. 21, 2010) (“Final Judgment”)) in excess of \$630,000. In an  
 12 opinion written by Judge Lourie and joined by Judges Mayer and O'Malley, the Federal Circuit  
 13 affirmed the District Court's finding that the case was exceptional under 35 U.S.C. § 285 in light  
 14 of various instances of litigation misconduct and other bad faith behavior. (*Eon-Net LP, v.*  
 15 *Flagstar Bancorp*, Case No. 09-1308 (2009)).

### 16 CONCLUSION

17 A “material” fact is one which might affect the outcome of the case under the applicable  
 18 law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248, 106 S.Ct. at 2510 (1986) (holding that a  
 19 court must determine whether evidence presents a sufficient disagreement to require submission  
 20 to a jury or whether it is so one-sided that one party must prevail as a matter of law). A dispute  
 21 about a material fact is genuine if a reasonable jury could return a verdict for the non-moving  
 22 party. *Id.*

23 Determining infringement (or non-infringement) involves a two-step process. *Markman*  
 24 *v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370  
 25 (1996). The first step requires the Court to construe the claims to ascertain their meaning and  
 26 scope. *Id.* The second step requires a comparison of the construed claims to the Accused  
 27 Products to determine whether the elements in the asserted claims are found in that product. *Id.*

28 While infringement, either literal or under the doctrine of equivalents, is a question of

fact, judgment for the Plaintiff may nevertheless be granted “when no reasonable jury could find that every limitation recited in the properly construed claim either is or is not found in the accused device.” *Bai v. L & L Wings*, 160 F.3d 1350, 1353 (Fed. Cir. 1998). That is true even where there are incidental claim construction issues not yet resolved. Claim construction is a question of law for the Court to decide, and as the Court has recognized, resolution of such issues in connection with a motion on infringement often provides necessary context to fully frame such issues. *Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319, 1324 (Fed. Cir. 2002).

Furthermore, a dismissal with prejudice operates as an adjudication on the merits. *Thomas v. Freeman* (1997), 79 Ohio St.3d 221, 225, 680 N.E.2d 997, fn. 2. It follows that a dismissal otherwise than on the merits should be without prejudice. *Id.* See also, *Tower City Properties v. Cuyahoga Cty. Bd. of Revision* (1990), 49 Ohio St.3d 67, 69, 551 N.E.2d 122, 124. A “dismissal with prejudice operates as a rejection of the plaintiff’s claim on the merits” and would preclude further Federal litigation.

Plaintiff *Nomura*’s patent infringement case is actually quite simple- as is my *Complaint*. Respectfully, Plaintiff *Nomura* believes sufficient statements of fact and sufficiently supportive examples of evidence clearly demonstrate that *YouTube* –despite their ‘claims’ to the contrary– is, as a material fact, infringing on Plaintiff *Nomura*’s ‘622 patent, and, that the Plaintiff should be awarded appropriate damages therefrom such infringements.

To that end and in the interest of fair equitable justice, the Court must be duly swayed and reasonably compelled by the preponderance of factual statements, factual claims, and factual evidence submitted hereto by –and in support of– Plaintiff *Nomura*.


Therefore, based on the body of evidence before this Court, as well as the other related and relevant information included here to-date and hereinbefore, Plaintiff *Nomura* respectfully submits that this Court certainly has the right –if not a legal obligation– to find in favor of Plaintiff *Nomura* and to immediately:

1) **DENY Defendant’s Motion to Dismiss Plaintiff’s patent infringement;**

2) **DENY Defendant’s Request to Strike all infringement Damages.**

Plaintiff *Nomura* has every best belief and firmest faith that this Court can and will deliver the appropriate level of honest, fair and righteous justice –in an expediently lawful manner– to FULLY remedy all factual matters that have been heretofore presented before this Court.

Dated this 21<sup>st</sup> day of October, 2011

y:   
Tetsuya Joe Nomura,  
Pro Se Plaintiff

**EXHIBIT 01**

**“YouTube – Broadcast Yourself.”**

<http://www.YouTube.com/>

and

**“The Avengers (2012) watch the Official Teaser Trailer | HD”**

[http://www.YouTube.com/watch?v=zatgnqdlfs&feature=topvideos\\_mp](http://www.YouTube.com/watch?v=zatgnqdlfs&feature=topvideos_mp)

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Browse Music Movies Upload

Create Account Sign In



Join the largest worldwide video-sharing community!

Create Account

Already have an account? Sign In

## Spotlight

## Exclusive Interview: Joel Schumacher

Legendary director Joel Schumacher dishes on his seminal hits, same-day-as-theater movie rentals, and his latest thriller starring Nicholas Cage and Nicole Kidman. "Trespass" debuts on YouTube today.

Presented by: movies

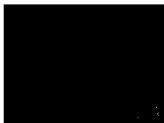
## Music



Kelly Rowland - Lay It On Me ft. ...  
by kellyrowlandVEVO



Shady 2.0 BET Cypher 2011 (Yelaw...  
by jet911



Hollywood Undead - I Don't Wanna...  
by UKFDubstep



DJ Tuniziano & Tede - Mammy Się D...  
by TEDEWIZJA



Exclusive YouTube Joel Schumacher Interview  
by MillenniumVOD  
237 views



Trespass  
by MillenniumVOD  
\$6.99

## Entertainment



Nicki Minaj Sings 'Super Bass' w...  
by TheEllenShow



Minecraft - Simon vs Enderman - ...  
by BlueKephos



DIRTY DIRTY RIHANNA & THE OTHER 53%  
by sxeephil



Sophia Grace's Show Stopping Per...  
by TheEllenShow

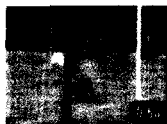


Trespass - Inside the Thriller  
by MillenniumVOD  
166 views



St. Elmo's Fire  
by Crackle  
19,582 views

## Sports



FAIL! Fatal own goal from VAlek...  
by SportsRuOnlinegoals



Epic Trick Shot Battle - Dude Pe...  
by corycotton



Javier Hernandez Chicharito Amaz...  
by KingChicharitoHD



Россия — Андорра 6-0 Обзор матча  
by SportsRuOnlinegoals

## Trends



Horse Jumps Into Rail Bourbon Stakes 2011  
by LEOReplays  
817,260 views



FAIL! Fatal own goal from VAleksanyan (Armenia...  
by SportsRuOnlinegoals

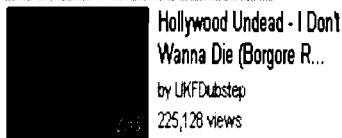
## Most Viewed

## Top Favored





**The Avengers (2012) watch the Official Teaser Trailer | HD**  
[http://www.youtube.com/watch?v=zatgnqdlats&feature=topvideos\\_mp](http://www.youtube.com/watch?v=zatgnqdlats&feature=topvideos_mp)



## Featured



## Film & Animation



RCVR Episode 5:  
DCVR (Brand new...  
by machinima

The Avengers - Os  
Vingadores  
by telecine

"คุณต๋น" ร้องให้ คุณต๋น  
"สรวท"  
by duangae

เสียงสวอน ต้น อธิติ  
Tan ic...  
by CNNtv1

## News & Politics

## Comedy



CLIFFHANGER  
KITTY!!  
by Tobuscus

The Online Gamer:  
Season 2 - Ep. 13  
by RecklessTortuga

Steve Spurrier upset  
with writer  
by  
GamecockAnthemTub

CRISTIANO هيف كريس  
مند التانيرك  
by qads78



First iPhone 4S Test  
(Official R...  
by applemaestrotouch

A conversation with  
Siri on the ...  
by macworld

Introduction to interest  
by khanacademy

Fundamental  
Interactions of Equi...  
by ignitellearning

## What's New

### YouTube.com/Movies

Your place for video now has movie rentals.  
Start watching now or learn more

### YouTube.com/Live

Check out the top live events happening on YouTube!

### Meet the October "On The Rise" Nominees

Each month, we find four YouTube Partners whose subscriber numbers are growing but who still have fewer than 100,000 for our On The Rise program. After you check out their videos and channels, we'll

[Read more in our Blog](#)

[Help](#) [About](#) [Press & Blogs](#) [Copyright](#) [Creators & Partners](#) [Advertising](#) [Developers](#) [Safety](#) [Privacy](#) [Terms](#)

© 2011 YouTube, LLC [Report a bug](#) [Try something new!](#) [Language: English](#) [Location: Worldwide](#) [Safety mode: Off](#)

## EXHIBIT 02

**“YouTube - Wikipedia, the free encyclopedia”**

<https://secure.wikimedia.org/wikipedia/en/wiki/YouTube>

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Ilokano

## Q

From Wikipedia, the free encyclopedia

Unregistered users may watch videos, and registered users may upload an unlimited number of videos. Videos that are considered to contain potentially offensive content are available only to registered users 18 years old and older. In November 2006, YouTube, LLC was bought by Google Inc. for US\$1.65 billion, and now operates as a subsidiary of Google.

## Contents [hide]

- 1 Company history
- 2 Features
  - 2.1 Video technology
    - 2.1.1 Playback
    - 2.1.2 Uploading
    - 2.1.3 Quality and codecs
    - 2.1.4 3D videos
  - 2.2 Content accessibility
    - 2.2.1 Platforms
  - 2.3 Localization
- 3 April Fools
- 4 Censorship and filtering
- 5 Social impact
- 6 Community policy
  - 6.1 Copyrighted material
  - 6.2 Controversial content
  - 6.3 User comments
- 7 See also
- 8 References
- 9 Bibliography
- 10 External links

**Main article:** *History of YouTube*

YouTube was founded by Chad Hurley, Steve Chen, and Jawed Karim, who were all early employees of PayPal.<sup>[6]</sup> Hurley had studied design at Indiana University of

**YouTube, LLC**



<b>Type</b>	Subsidiary, limited liability company
<b>Founded</b>	<b>February 14, 2005</b>
<b>Founder</b>	Steve Chen Chad Hurley Jawed Karim
<b>Headquarters</b>	<b>901 Cherry Ave, San Bruno, California, United States</b>
<b>Area served</b>	<b>Worldwide</b>
<b>Key people</b>	Salar Kamangar , CEO Chad Hurley , Advisor
<b>Owner</b>	<b>Independent (2005–2006) Google Inc. (2006–present)</b>
<b>Slogan</b>	<b>Broadcast Yourself</b>
<b>Website</b>	youtube.com <span>↗</span> (see list of localized domain names)
<b>Alexa rank</b>	<b>— 3 (October 2011)</b> <sup>[1]</sup>
<b>Type of site</b>	video hosting service
<b>Advertising</b>	Google AdSense
<b>Registration</b>	Optional (Only required for certain tasks such as viewing flagged videos, viewing flagged comments and uploading videos)
<b>Available in</b>	<b>34 languages available through user interface</b> <sup>[2]</sup>
<b>Launched</b>	<b>February 14, 2005</b>
<b>Current status</b>	<b>Active</b>



1 Bahasa Indonesia  
 Interlingua  
 2 isiZulu  
 Íslenska  
 Italiano  
 3 עברית  
 Basa Jawa  
 4 ಕನ್ನಡ  
 Kapampangan  
 5 ಕನ್ನಡ  
 Қазақша  
 Kiswahili  
 6 Kurdî  
 Latina  
 7 Latviešu  
 Lëtzebuergesch  
 8 Lietuvių  
 Magyar  
 9 Македонски  
 മലയാളം  
 10 Maltil  
 मराठी  
 11 Bahasa Melayu  
 12 Nederlands  
 Nedersaksisch  
 13 Norsk (bokmål)  
 Norsk (nynorsk)  
 14 O'zbek  
 Pälzisch  
 15 پنجابی  
 Paplamenteu  
 16 ਪੰਜਾਬੀ  
 PlattDütsch  
 17 Polski  
 Português  
 18 Română  
 Русский  
 19 Саха тыла  
 Seeltersk  
 20 Shqip  
 Simple English  
 21 Slovenčina  
 Slovenščina  
 22 Soomaaliga  
 Српски / Srpski  
 23 Srpskohrvatski /  
 Српскохрватски  
 Suomi  
 24 Svenska  
 Tagalog  
 25 தமிழ்  
 Татарча/Tatarça  
 26 తెలుగు  
 27 Тоҷикӣ  
 Türkçe  
 28 Українська  
 اردو

Pennsylvania, while Chen and  
 Karim studied computer  
 science together at the  
 University of Illinois at  
 Urbana-Champaign.<sup>[7]</sup>



From left to right: Chad Hurley, Steve Chen, and Jawed Karim

According to a story that has often been repeated in the media, Hurley and Chen developed the idea for YouTube during the early months of 2005, after they had experienced difficulty sharing videos that had been shot at a dinner party at Chen's apartment in San Francisco. Karim did not attend the party and denied that it had occurred, while Hurley commented that the idea that YouTube was founded after a dinner party "was probably very strengthened by marketing ideas around creating a story that was very digestible".<sup>[8]</sup>

YouTube began as a venture-funded technology startup, primarily from a \$11.5 million investment by Sequoia Capital between November 2005 and April 2006.<sup>[9]</sup> YouTube's early headquarters were situated above a pizzeria and Japanese restaurant in San Mateo, California.<sup>[10]</sup> The domain name [www.youtube.com](http://www.youtube.com) was activated on February 14, 2005, and the website was developed over the subsequent months.<sup>[11]</sup>

The first YouTube video was entitled *Me at the zoo*, and shows founder Karim at the San Diego Zoo.<sup>[12]</sup> The video was uploaded on April 23, 2005, and can still be viewed on the site.<sup>[13]</sup>

YouTube offered the public a beta test of the site in May 2005, six months before the official launch in November 2005. The site grew rapidly, and in July 2006 the company announced that more than 65,000 new videos were being uploaded every day, and that the site was receiving 100 million video views per day.<sup>[14]</sup> According to data published by market research company comScore, YouTube is the dominant provider of online video in the United States, with a market share of around 43 percent and more than 14 billion videos viewed in May 2010.<sup>[15]</sup> YouTube says that over 48 hours of new videos are uploaded to the site every minute, and that around three quarters of the material comes from outside the US.<sup>[16][17]</sup> It is estimated that in 2007 YouTube consumed as much bandwidth as the entire Internet in 2000.<sup>[18]</sup> Alexa ranks YouTube as the third most visited website on the Internet, behind Google and Facebook.<sup>[19]</sup>

The choice of the name [www.youtube.com](http://www.youtube.com) led to problems for a similarly named website, [www.utube.com](http://www.utube.com). The owner of the site, Universal Tube & Rollform Equipment, filed a lawsuit against YouTube in November 2006 after being overloaded on a regular basis by people looking for YouTube. Universal Tube has since changed the name of its website to [www.utubeonline.com](http://www.utubeonline.com).<sup>[20][21]</sup> In October 2006, Google Inc. announced that it had acquired YouTube for \$1.65 billion in Google stock, and the deal was finalized on November 13, 2006.<sup>[22]</sup> Google does not provide detailed figures for YouTube's running costs, and YouTube's revenues in 2007 were noted as "not material" in a regulatory filing.<sup>[23]</sup> In June 2008, a *Forbes* magazine article projected the 2008 revenue at \$200 million, noting progress in advertising sales.<sup>[24]</sup>

In November 2008, YouTube reached an agreement with MGM, Lions Gate Entertainment, and CBS, allowing the companies to post full-length films and television episodes on the site, accompanied by advertisements in a section for US viewers called "Shows". The move was intended to create competition with websites such as Hulu, which features material from NBC, Fox, and Disney.<sup>[25][26]</sup> In November 2009, YouTube launched a version of "Shows" available to UK viewers, offering around 4,000 full-length shows from more than 60 partners.<sup>[27]</sup> In January 2010, YouTube introduced an online film rentals service,<sup>[28]</sup> which is currently available only to users in the US, Canada and the UK.<sup>[29][30]</sup> The service offers over 6,000 films.<sup>[31]</sup>

In March 2010, YouTube began free streaming of certain content, including 60 cricket matches of the Indian Premier League. According to YouTube, this was the first worldwide free online broadcast of a major sporting event.<sup>[32]</sup>

On March 31, 2010, the YouTube website launched a new design, with the aim of simplifying the interface and increasing the time users spend on the site. Google product manager Shiva Rajaraman commented: "We really felt like we needed to step back and remove the clutter."<sup>[33]</sup> In May 2010, it was reported that YouTube was serving more than two billion videos a day, which it described as "nearly double the prime-time audience of all three major US television



YouTube's current headquarters in San Bruno, California

networks combined".<sup>[34]</sup> In May 2011, YouTube reported in its company blog that the site was receiving more than three billion views per day.<sup>[16]</sup>

In October 2010, Hurley announced that he would be stepping down as chief executive officer of YouTube to take an advisory role, and that Salar Kamnagar would take over as head of the company.<sup>[35]</sup>

Vèneto  
 Tiếng Việt  
 Walon  
 𐌵𐌹𐌿𐌺𐌰  
 Zazaki  
 𐌵𐌹𐌿𐌺𐌰

reference to take an advisory role, and that other challenges needs take care of the needs of the company.  
 In April 2011, James Zern, a YouTube software engineer, revealed that 30 percent of videos accounted for 99 percent of views on the site.<sup>[38]</sup>

## Features

### Video technology

#### Playback

Viewing YouTube videos on a personal computer requires the Adobe Flash Player plug-in to be installed on the browser. The Adobe Flash Player plug-in is one of the most common pieces of software installed on personal computers and accounts for almost 75% of online video material.<sup>[37]</sup>

In January 2010, YouTube launched an experimental version of the site that uses the built-in multimedia capabilities of web browsers supporting the HTML5 standard. This allows videos to be viewed without requiring Adobe Flash Player or any other plug-in to be installed.<sup>[38][39]</sup> The YouTube site has a page that allows supported browsers to opt in to the HTML5 trial. Only browsers that support HTML5 Video using the H.264 or WebM formats can play the videos, and not all videos on the site are available.<sup>[40][41]</sup>

#### Uploading

Videos uploaded to YouTube by standard account holders are limited to 15 minutes in duration. When YouTube was launched in 2005, it was possible to upload longer videos, but a ten-minute limit was introduced in March 2006 after YouTube found that the majority of videos exceeding this length were unauthorized uploads of television shows and films.<sup>[42][43]</sup> The 10-minute limit was increased to 15 minutes in July 2010.<sup>[44]</sup> Partner accounts are permitted to upload longer videos, subject to acceptance by YouTube.<sup>[45]</sup> File size is limited to 2 GB for uploads from YouTube web page, and to 20 GB if Java-based Advanced Uploader is used. In December 2010, YouTube announced that holders of standard accounts would be allowed to upload videos of unlimited length, provided that they have a good history of following the site's Community Guidelines and policy on copyright.<sup>[46][47]</sup> YouTube accepts videos uploaded in most container formats, including AVI, .MKV, .MOV, .MP4, DivX, .FLV, and .ogg and .ogv. These include video formats such as MPEG-4, MPEG, VOB, and WMV. It also supports 3GP, allowing videos to be uploaded from mobile phones.<sup>[48]</sup> Videos with progressive scanning or interlaced scanning can be uploaded, but for the best video quality, YouTube prefers interlaced videos to be deinterlaced prior to uploading. All the video formats on YouTube use progressive scanning.<sup>[49]</sup>

#### Quality and codecs

YouTube originally offered videos at only one quality level, displayed at a resolution of 320x240 pixels using the Sorenson Spark codec (a variant of H.263),<sup>[50][51]</sup> with mono MP3 audio.<sup>[52]</sup> In June 2007, YouTube added an option to watch videos in 3GP format on mobile phones.<sup>[53]</sup> In March 2008, a high quality mode was added, which increased the resolution to 480x360 pixels.<sup>[54]</sup> In November 2008, 720p HD support was added. At the time of the 720p launch, the YouTube player was changed from a 4:3 aspect ratio to a widescreen 16:9.<sup>[55]</sup> With this new feature, YouTube began a switchover to H.264/MPEG-4 AVC as its default video compression format. In November 2009, 1080p HD support was added. In July 2010, YouTube announced that it had launched a range of videos in 4K format, which allows a resolution of up to 4096x3072 pixels.<sup>[56][57]</sup>

YouTube videos are available in a range of quality levels. The former names of standard quality (SQ), high quality (HQ) and high definition (HD) have been replaced by numerical values representing the vertical resolution of the video. The default video stream is encoded in H.264/MPEG-4 AVC format, with stereo AAC audio.<sup>[58]</sup>

Comparison of YouTube media encoding options											
fmt value <sup>[1]</sup>	5	34	35	18	22	37	38	43	44	45	17
Default container	FLV			MP4			WebM <sup>[59]</sup>			3GP	
Encoding	Sorenson H.263		MPEG-4 AVC (H.264)				VP8			MPEG-4 Visual	
Profile	–		Main	Baseline	High			–			–
Resolution progressive	240p	360p	480p	360p	720p	1080p					
Resolution VGA	WQVGA	nHD	FWVGA	nHD	WXGA	WUXGA					
Max width (pixels)	400	640	854	640	1280	1920	4096	640	854	1280	176
Max height (pixels)	240	360	480	360	720	1080	3072	360	480	720	144



Audio	max height (pixels)	240	360	480	360	720	1080	3072	360	480	720	144
	Bitrate <sup>[2]</sup> (Mbit/s)	0.25	0.5	0.8–1.0	0.5	2.0–2.9	3.5–5.0	–	0.5	1	2	–
	Encoding	MP3			AAC				Vorbis			AAC
	Channels	1–2				2 (stereo)						
	Sampling rate (Hz)	22050				44100						
	Bitrate <sup>[2]</sup> (kbit/s)	64	128		96	152		96	128	192		–

<sup>^</sup> 1 *Aut* was an undocumented URL parameter that allowed selecting YouTube quality mode without using player user interface. Since December 2010, this parameter is no longer supported.

<sup>^</sup> 2 Approximate values based on statistical data; actual bitrate can be higher or lower due to variable encoding rate.<sup>[60]</sup>  
[61][62][63]

### 3D videos

In a video posted on July 21, 2009,<sup>[64]</sup> YouTube software engineer Peter Bradshaw announced that YouTube users can now upload 3D videos. The videos can be viewed in several different ways, including the common anaglyph (cyan/red lens) method which utilizes glasses worn by the viewer to achieve the 3D effect.<sup>[65][66][67]</sup> The YouTube Flash player can display stereoscopic content interleaved in rows, columns or a checkerboard pattern, side-by-side or anaglyph using a red/cyan, green/magenta or blue/yellow combination. In May 2011, an HTML5 version of the YouTube player began supporting side-by-side 3D footage that is compatible with Nvidia 3D Vision.<sup>[68]</sup>

### Content accessibility

One of the key features of YouTube is the ability of users to view its videos on web pages outside the site. Each YouTube video is accompanied by a piece of HTML, which can be used to embed it on a page outside the YouTube website. This functionality is often used to embed YouTube videos in social networking pages and blogs.<sup>[69]</sup> Embedding, as well as ranking and commenting, can be disabled by the video owner.

YouTube does not usually offer a download link for its videos, and intends for them to be viewed through its website interface.<sup>[70]</sup> A small number of videos, such as the weekly addresses by President Barack Obama, can be downloaded as MP4 files.<sup>[71]</sup> Numerous third-party web sites, applications and browser plug-ins allow users to download YouTube videos.<sup>[72]</sup> In February 2009, YouTube announced a test service, allowing some partners to offer video downloads for free or for a fee paid through Google Checkout.<sup>[73]</sup>




### Platforms

Some smartphones are capable of accessing YouTube videos, dependent on the provider and the data plan. YouTube Mobile was launched in June 2007, and uses RTSP streaming for the video.<sup>[74]</sup> Not all of YouTube's videos are available on the mobile version of the site.<sup>[75]</sup>

Since June 2007, YouTube's videos have been available for viewing on a range of Apple products. This required YouTube's content to be transcoded into Apple's preferred video standard, H.264, a process that took several months. YouTube videos can be viewed on devices including Apple TV, iPod Touch and the iPhone.<sup>[76]</sup> A TiVo service update in July 2008 allowed the system to search and play YouTube videos.<sup>[77]</sup> In January 2009, YouTube launched "YouTube for TV", a version of the website tailored for set-top boxes and other TV-based media devices with web browsers, initially allowing its videos to be viewed on the PlayStation 3 and Wii video game consoles.<sup>[78][79]</sup> In June 2009, YouTube XL was introduced, which has a simplified interface designed for viewing on a standard television screen.<sup>[80]</sup>

### Localization

On June 19, 2007, Google CEO Eric Schmidt was in Paris to launch the new localization system.<sup>[81]</sup> The interface of the website is available with localized versions in 32 countries and a USA version.<sup>[82][83]</sup> To date, the latest localize YouTube website is the "Philippines" version which was recently launched on October 13, 2011, became YouTube's 34th local version dedicated to a specific country, but the first of its type in Southeast Asia (SEA).

Country	Language	Launch date
 United States (and worldwide launch)	English (American)	February 15, 2005 <sup>[81]</sup>
 Brazil	Portuguese (Brazil)	June 19, 2007 <sup>[81]</sup>
 France	French	June 19, 2007 <sup>[81]</sup>



	Ireland	English (Ireland)	June 19, 2007 <sup>[81]</sup>
	Italy	Italian	June 19, 2007 <sup>[81]</sup>
	Japan	Japanese	June 19, 2007 <sup>[81]</sup>
	Netherlands	Dutch	June 19, 2007 <sup>[81]</sup>
	Poland	Polish	June 19, 2007 <sup>[81]</sup>
	Spain	Spanish and Catalan	June 19, 2007 <sup>[81]</sup>
	United Kingdom	English (United Kingdom)	June 19, 2007 <sup>[81]</sup>
	Mexico	Spanish (Mexico)	October 11, 2007 <sup>[84]</sup>
	Hong Kong	English and Chinese (Traditional)	October 17, 2007 <sup>[85]</sup>
	Taiwan	Chinese (Traditional)	October 18, 2007 <sup>[85]</sup>
	Australia	English (Australia)	October 22, 2007 <sup>[86]</sup>
	New Zealand	English (New Zealand)	October 22, 2007 <sup>[86]</sup>
	Canada	English (Canada) and French (Canada)	November 6, 2007 <sup>[87]</sup>
	Germany	German	November 8, 2007 <sup>[88]</sup>
	Russia	Russian	November 13, 2007
	Korea, South	Korean	January 23, 2008
	Israel	Hebrew	September 16, 2008
	India	English (India) and Hindi	May 7, 2008 <sup>[89]</sup>
	Czech Republic	Czech	October 9, 2008 <sup>[90]</sup>
	Sweden	Swedish	October 22, 2008
	South Africa	English (South African)	May 17, 2010 <sup>[91]</sup>
	Argentina	Spanish	September 8, 2010 <sup>[92]</sup>
	Algeria	Arabic	March 9, 2011 <sup>[91]</sup>
	Egypt	Arabic	March 9, 2011 <sup>[91]</sup>
	Saudi Arabia	Arabic	March 9, 2011 <sup>[91]</sup>
	Tunisia	Arabic	March 9, 2011 <sup>[91]</sup>
	Jordan	Arabic	March 9, 2011 <sup>[91]</sup>
	Morocco	Arabic	March 9, 2011 <sup>[91]</sup>
	Yemen	Arabic	March 9, 2011 <sup>[91]</sup>
	Philippines	English (official) and Filipino	October 13, 2011 <sup>[92]</sup>

The YouTube interface suggests which local version should be chosen on the basis of the IP address of the user. In some cases, the message "This video is not available in your country" may appear because of copyright restrictions or inappropriate content.<sup>[93]</sup>

The interface of the YouTube website is available in 30 different languages, including Catalan, Danish, Finnish, Greek, Hungarian, Norwegian and Slovene, which do not have local channel versions.<sup>[2]</sup>

Plans for YouTube to create a local version in Turkey have run into problems, since the Turkish authorities asked YouTube to set up an office in Turkey, which would be subject to Turkish law. YouTube says that it has no intention of doing this, and that its videos are not subject to Turkish law. Turkish authorities have expressed concerns that YouTube has been used to post videos insulting to Mustafa Kemal Atatürk and some material offensive to Muslims.<sup>[94][95]</sup>

In March 2009, a dispute between YouTube and the British royalty collection agency PRS for Music led to premium music videos being blocked for YouTube users in the United Kingdom. The removal of videos posted by the major record companies occurred after failure to reach agreement on a licensing deal. The dispute was resolved in September 2009.<sup>[96]</sup> In April 2009, a similar dispute led to the removal of premium music videos for users in Germany.<sup>[97]</sup>

## April Fools

YouTube has featured an April Fools prank on the site on April 1 of every year since 2008:

- 2008: All the links to the videos on the main page were redirected to Rick Astley's music video

"Never Gonna Give You Up", a prank known as "Rickrolling".<sup>[98][99]</sup>

- **2009:** When clicking on a video on the main page, the whole page turned upside down. YouTube claimed that this was a new layout.<sup>[100]</sup>
- **2010:** YouTube temporarily released a "TEXTp" mode, which translated the colors in the videos to random upper case letters. YouTube claimed in a message that this was done in order to reduce bandwidth costs by \$1 per second.<sup>[101]</sup>
- **2011:** The site celebrated its "100th anniversary" with a "1911 button" and a range of sepia-toned silent, early 1900s-style films, including "Flugelhorn Feline", a parody of Keyboard Cat.<sup>[102]</sup>

## Censorship and filtering

*Main article: Censorship of YouTube*

Several countries have blocked access to YouTube, including:

- YouTube has been blocked in the People's Republic of China.<sup>[103][104]</sup>
- Morocco shut down access to YouTube in 2008.<sup>[105]</sup>
- Thailand blocked YouTube between 2006 and 2007 due to offensive videos relating to King Bhumibol Adulyadej.<sup>[106][107]</sup>
- Turkey blocked access to YouTube between 2008 and 2010 after controversy over videos deemed insulting to Mustafa Kemal Atatürk.<sup>[108][109][110]</sup> The block was lifted briefly but reimposed in November 2010.<sup>[111]</sup>
- On December 3, 2006, Iran temporarily blocked access to YouTube, along with several other sites, after declaring them as violating social and moral codes of conduct. The YouTube block came after a video was posted online that appeared to show an Iranian soap opera star having sex.<sup>[112]</sup> The block was later lifted and then reinstated after Iran's 2009 presidential election.<sup>[113]</sup>
- On February 23, 2008, Pakistan blocked YouTube because of "offensive material" towards the Islamic faith, including display of the Danish cartoons of the prophet Muhammad.<sup>[114]</sup> This led to a near global blackout of the YouTube site for around two hours, as the Pakistani block was inadvertently transferred to other countries. Pakistan lifted its block on February 26, 2008.<sup>[115]</sup> Many Pakistanis circumvented the three-day block by using virtual private network software.<sup>[116]</sup> In May 2010, following the Everybody Draw Mohammed Day, Pakistan again blocked access to YouTube, citing "growing sacrilegious content".<sup>[117]</sup>
- On January 24, 2010, Libya blocked access to YouTube after it featured videos of demonstrations in the Libyan city of Benghazi by families of detainees who were killed in Abu Salim prison in 1996, and videos of family members of Libyan leader Muammar Gaddafi at parties. The blocking was criticized by Human Rights Watch.<sup>[118]</sup>

Schools have blocked access to YouTube, citing the inability to determine what sort of video material might be accessed by students.<sup>[119]</sup>

YouTube was awarded a 2008 Peabody Award and cited for being "a 'Speakers' Corner' that both embodies and promotes democracy".<sup>[120][121]</sup>

*Entertainment Weekly* put it on its end-of-the-decade "best-of" list. It said: "Providing a safe home for piano-playing cats, celeb goof-ups, and overzealous lip-synchers since 2005."<sup>[122]</sup>

## Social impact

*Main article: Social impact of YouTube*

Before the launch of YouTube in 2005, there were few easy methods available for ordinary computer users who wanted to post videos online. With its simple interface, YouTube made it possible for anyone with an Internet connection to post a video that a worldwide audience could watch within a few minutes. The wide range of topics covered by YouTube has turned video sharing into one of the most important parts of Internet culture.

An early example of the social impact of YouTube was the success of The Bus Uncle video in 2006. It shows a heated conversation between a youth and an older man on a bus in Hong Kong, and was discussed widely in the mainstream media.<sup>[123]</sup> Another YouTube video to receive extensive coverage is *guitar*,<sup>[124]</sup> which features a performance of Pachelbel's Canon on an electric guitar. The name of the performer is not given in the video. After it received millions of views *The New York Times* revealed the identity of the guitarist as Lim Jeong-hyun, a 23-year-old from South Korea who had recorded the track in his bedroom.<sup>[125]</sup> This video has since been removed from YouTube.



Charlie Bit My Finger is YouTube's most-viewed user generated video.

had received the video in his bedroom. This video has since been removed from YouTube.

*Charlie Bit My Finger*, which was uploaded on May 22, 2007, is a viral video that has received the most views of any user generated YouTube video, with over 300 million views.<sup>[126][127][128]</sup> The clip features two English brothers, with one-year-old Charlie biting the finger of his brother Harry, aged three.<sup>[129]</sup> In *Time's* list of YouTube's 50 greatest viral videos of all time, "Charlie Bit My Finger" was ranked at number one.<sup>[130]</sup>

### Community policy

YouTube has a set of community guidelines aimed to reduce abuse of the site's features. Generally prohibited material includes sexually explicit content, videos of animal abuse, shock videos, content uploaded without the copyright holder's consent, hate speech, spam, and predatory behaviour.<sup>[131]</sup> Despite the guidelines, YouTube has faced criticism from news sources for content in violation of these guidelines.

### Copyrighted material

At the time of uploading a video, YouTube users are shown a screen with the message "Do not upload any TV shows, music videos, music concerts or advertisements without permission, unless they consist entirely of content that you created yourself".<sup>[132]</sup> Despite this advice, there are still many unauthorized clips of copyrighted material on YouTube. YouTube does not view videos before they are posted online, and it is left to copyright holders to issue a takedown notice pursuant to the terms of the Digital Millennium Copyright Act.

Organizations including Viacom, Mediaset, and the English Premier League have filed lawsuits against YouTube, claiming that it has done too little to prevent the uploading of copyrighted material.<sup>[133][134][135]</sup> Viacom, demanding \$1 billion in damages, said that it had found more than 150,000 unauthorized clips of its material on YouTube that had been viewed "an astounding 1.5 billion times". YouTube responded by stating that it "goes far beyond its legal obligations in assisting content owners to protect their works".<sup>[136]</sup> During the same court battle, Viacom won a court ruling requiring YouTube to hand over 12 terabytes of data detailing the viewing habits of every user who has watched videos on the site. The decision was criticized by the Electronic Frontier Foundation, which called the court ruling "a setback to privacy rights".<sup>[137][138]</sup>

In August 2008, a US court ruled in *Lenz v. Universal Music Corp.* that copyright holders cannot order the removal of an online file without first determining whether the posting reflected fair use of the material. The case involved Stephanie Lenz from Gallitzin, Pennsylvania, who had made a home video of her 13-month-old son dancing to Prince's song "Let's Go Crazy", and posted the 29-second video on YouTube.<sup>[139]</sup> In June 2010, Viacom's lawsuit against Google was rejected in a summary judgment, with U.S. federal Judge Louis L. Stanton stating that Google was protected by provisions of the Digital Millennium Copyright Act. Viacom announced its intention to appeal the ruling.<sup>[140]</sup> Since Viacom filed its lawsuit in 2008, YouTube has introduced the "Video ID" system, which checks uploaded videos against a database of copyrighted content with the aim of reducing violations.<sup>[141]</sup>

### Controversial content

YouTube has also faced criticism over the offensive content in some of its videos. The uploading of videos containing defamation, pornography, and material encouraging criminal conduct is prohibited by YouTube's terms of service.<sup>[142]</sup> Controversial areas have included Holocaust denial and the Hillsborough disaster, in which 96 football fans from Liverpool were crushed to death in 1989.<sup>[143][144]</sup>

YouTube relies on its users to flag the content of videos as inappropriate, and a YouTube employee will view a flagged video to determine whether it violates the site's terms of service.<sup>[142]</sup> In July 2008, the Culture and Media Committee of the House of Commons of the United Kingdom stated that it was "unimpressed" with YouTube's system for policing its videos, and argued that "proactive review of content should be standard practice for sites hosting user-generated content". YouTube responded by stating:

We have strict rules on what's allowed, and a system that enables anyone who sees inappropriate content to report it to our 24/7 review team and have it dealt with promptly. We educate our community on the rules and include a direct link from every YouTube page to make this process as easy as possible for our users. Given the volume of content uploaded on our site, we think this is by far the most effective way to make sure that the tiny minority of videos that break the rules come down quickly.<sup>[145]</sup>

In October 2010, U.S. Congressman Anthony Weiner urged YouTube to take down from its website videos of imam Anwar al-Awlaki, tied to the accused Fort Hood shooter, Christmas Day bomber, and attempted Times Square bomber, and on the U.S. targeted killing list, saying that by hosting al-Awlaki's

attempted to use square corners, and on the other targeted killing not, saying that by receiving anti-terror messages, "We are facilitating the recruitment of homegrown terror".<sup>[146]</sup> British security minister Pauline Neville-Jones commented: "These Web sites would categorically not be allowed in the U.K. They incite cold-blooded murder, and as such are surely contrary to the public good." In November 2010, YouTube removed from its site some of the hundreds of videos featuring al-Awlaki's calls to *jihād*. It stated that it had removed videos that violated the site's guidelines prohibiting "dangerous or illegal activities such as bomb-making, hate speech and incitement to commit violent acts", or came from accounts "registered by a member of a designated foreign terrorist organization".<sup>[147]</sup> In December 2010, YouTube added "promotes terrorism" to the list of reasons that users can give when flagging a video as inappropriate.<sup>[148]</sup>

### User comments

Most videos enable users to leave comments, and these have attracted attention for the negative aspects of both their form and content. When *Time* in 2006 praised Web 2.0 for enabling "community and collaboration on a scale never seen before", it added that YouTube "harnesses the stupidity of crowds as well as its wisdom. Some of the comments on YouTube make you weep for the future of humanity just for the spelling alone, never mind the obscenity and the naked hatred".<sup>[149]</sup> *The Guardian* in 2009 described users' comments on YouTube as follows:

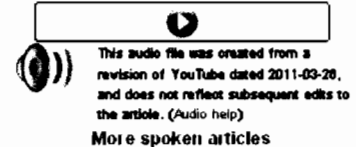
Juvenile, aggressive, misspelled, sexist, homophobic, swinging from raging at the contents of a video to providing a pointlessly detailed description followed by a LOL, YouTube comments are a hotbed of infantile debate and unashamed ignorance – with the occasional burst of wit shining through.<sup>[150]</sup>

In September 2008, *The Daily Telegraph* commented that YouTube was "notorious" for "some of the most confrontational and ill-formed comment exchanges on the internet", and reported on YouTube Comment Snob, "a new piece of software that blocks rude and illiterate posts".<sup>[151]</sup>

### See also

- Alternative media
- CNN-YouTube presidential debates
- Comparison of video hosting services
- List of Internet phenomena
- List of video hosting services
- List of YouTube personalities
- Viacom International Inc. v. YouTube, Inc.
- YouTube Awards
- YouTube Instant
- YouTube Live
- YouTube Symphony Orchestra

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Companies portal

Internet portal

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







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## External links

- Official website 
- YouTube mobile website 

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## EXHIBIT 03

**“YouTube Dominating Online Video Ad Business; \$1.3 Billion Forecast in 2011”**

<http://www.videonuze.com/blogs/?2011-03-25/YouTube-Dominating-Online-Video-Ad-Business--1-3-Billion-Forecast-in-2011/&id=3007>

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## YouTube Dominating Online Video Ad Business; \$1.3 Billion Forecast in 2011

 Friday, March 25, 2011, 10:31 AM ET  
 posted by: **Will Richmond**

A new report this week from Citi analyst Mark Mahaney forecasted that YouTube revenue could exceed \$1.3 billion in 2011 and rise to almost \$1.7 billion in 2012 (see below). Mahaney's conclusion is based on YouTube driving higher video views and an improved ability to monetize these views with advertising. Google has of course been famously tight-lipped about YouTube's financial condition, other than to issue increasingly optimistic statements in its quarterly earnings calls.

Figure 15. YouTube Revenue Analysis

	2010A	2011E	2012E
Current Annualized WW Page Views (000s)	808,382	929,651	1,050,506
Y/Y Growth	20%	15%	13%
CPM	\$1.02	\$1.43	\$1.61
Estimated YouTube Gross Revenue	\$825	\$1,328	\$1,685
% of YouTube Revenue With Revenue Share	50%	50%	50%
YouTube Revenue from Monetizable Videos (Mills)	\$412	\$664	\$843
Revenue Share	68%	68%	68%
Net Revenue Post Rev Share (Mills)	\$132	\$212	\$271
Total Net Revenue (Mills)	\$644	\$878	\$1119

Source: Citigroup Investment Research and Analysis, comScore

To put Mahaney's forecast into context, a December 2010 online video advertising forecast from eMarketer pegged the whole online video industry's ad revenue at \$1.97 billion in 2011, meaning YouTube alone could account for approximately 65% of the entire industry's revenue (granted it's dicey to mesh numbers from two different forecasts).

Regardless of the exact amount YouTube will generate or its specific share, the larger point is that YouTube is starting to fire on all cylinders, including generating big bucks from its home page ads from major brands. Almost two years ago I got all kinds of grief for suggesting it actually didn't matter how much money YouTube was losing at the time because it was such an enormously strategic asset for Google. That's now coming to pass.

Categories: Advertising, Aggregators

Related Analyses:

- ▶ Does It Actually Matter How Much Money YouTube is Losing? (06/18/09)
- ▶ Look Who's Advertising on YouTube's Homepage Now: VISA/Toy Story 3 and Xbox's Kinect (06/17/10)
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- ▶ Verizon Ordered to Pay ActiveVideo \$24.1M More (Light Reading)
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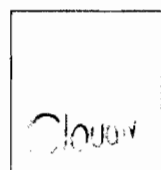
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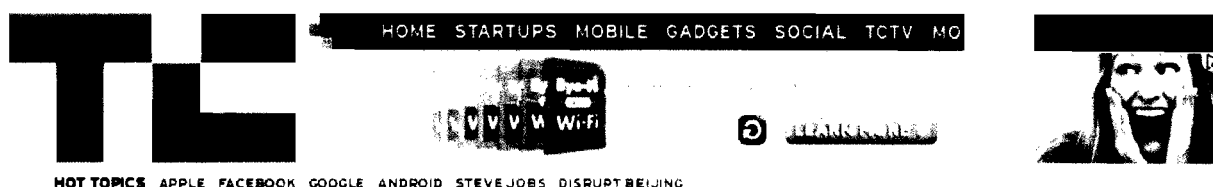


## EXHIBIT 04

**“YouTube Extends Revenue Sharing Program To Anyone With A Viral Video”**

<http://techcrunch.com/2009/08/25/youtube-extends-revenue-sharing-program-to-anyone-with-a-viral-video/>

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## YouTube Extends Revenue Sharing Program To Anyone With A Viral Video



JASON KINCAID



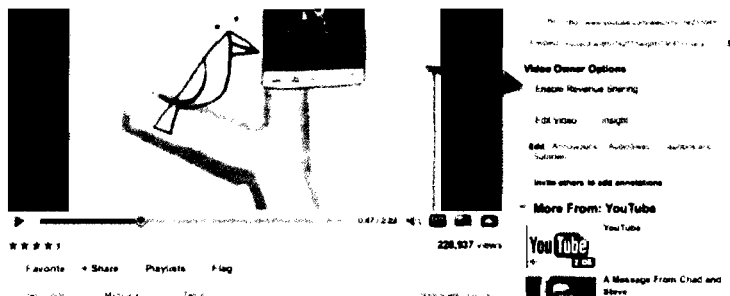
posted on August 25th, 2009

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Over a year and a half ago, YouTube launched a new Partner Program that allowed some of its most prolific and popular content owners to make some money from the content they contributed, inviting them to get a revenue share of ads placed against their videos. This was all well and good for YouTube's cream of the crop, but let's be honest — most of us don't contribute all that regularly, and the vast majority of our videos don't become popular, which means we couldn't get into the program. What's worse, even when one of your videos suddenly *did* go viral, if you weren't already in the program there wasn't anything you could do to reap the benefits. Today, that changes: YouTube is launching a new addition to its Partnership Program that will give *anyone* the chance to make some money when lightning strikes, even if it's the first video they've ever uploaded.



Here's how it works: YouTube will be monitoring its site for videos that quickly go viral, and will then reach out to the content uploader with an Email invitation to "Enable Revenue Sharing" on that video. If you choose to enable the feature, then YouTube will place ads against the video and will give you a cut, which gets paid into your Google AdSense account. YouTube's criteria for joining the program are vague — the site plans to look at the number of views a video gets, its virality, and compliance with the site's Terms of Service, but it has offered no concrete numbers.



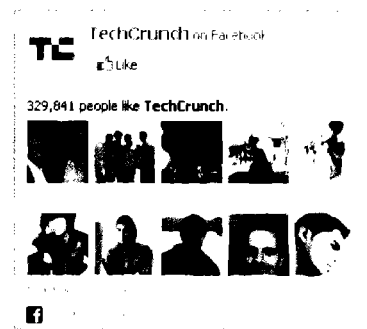
YouTube says that participants in the new program won't get all the benefits of the normal Partner Program (you won't be able to choose other videos you'd like to monetize, for example), so it encourages users to apply for the program [here](#).

Tom Pickett, Director of Online Sales and Operations at YouTube, said on a conference call today that the move is meant to help expand the reach of the site's partner program. The company will address not just new viral videos, but also videos on the site that have never been monetized but are extremely popular (Pickett says that many viral videos have quite lengthy lifespans — once you're popular, you can stay popular for years). Pickett says that the company expects to "increase the number of partners dramatically" up into the tens of thousands of partners (up from "thousands"). The revenue share will be the same as what applies to the general Partnership Program, with the majority of the revenue going to the content contributor.

YouTube spokesman Aaron Zamost says that advertisers have actually been requesting a feature like this for a while, as there have been a number of user-uploaded videos that were not being monetized at all, and in turn couldn't have ads placed against them. Now, provided the content uploader decides to join the program, these advertisers will be able to take advantage of these viral videos.

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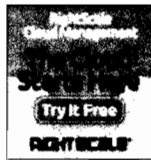
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